

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
APR 21 2 20 PM '93

DISPATCHED MM Docket No. 93-110 ✓

In the Matter of

H. GIBBS FLANDERS, JR.,
TRUSTEE

Licensee of Station WJHH(AM),
Soperton, Georgia

Order to Show Cause Why the
License for Station WJHH(AM),
Soperton, Georgia, Should
Not be Revoked

**ORDER TO SHOW CAUSE
AND
HEARING DESIGNATION ORDER**

Adopted: April 7, 1993;

Released: April 21, 1993

By the Chief, Mass Media Bureau:

1. The Chief, Mass Media Bureau, has before him for consideration: (a) the license held by H. Gibbs Flanders, Jr., for Station WJHH(AM), Soperton, Georgia; and (b) the results of an investigation into WJHH(AM)'s silent status.¹

2. The Commission's records indicate that WJHH(AM) has been off the air since June 8, 1990. Requests for authority to remain silent had been renewed through July 22, 1991, because the station was under the control of Mr. H. Gibbs Flanders, a Chapter 7 Bankruptcy Trustee, who

was administrating the estate of the former licensee of WJHH(AM), Holiday Broadcasting Systems, Inc. Mr. Flanders stated that the bankruptcy estate was financially unable to return WJHH(AM) to the air and that he was seeking to sell the station and assign its license. Mr. Flanders did not request a further extension of his silent authority until April 16, 1992, and again on September 30, 1992. These requests have not been acted upon because Mr. Flanders has failed to respond to Commission requests for additional information needed to complete processing.² By letters, dated July 23, 1992 and September 25, 1992, the Chief, AM Branch, Audio Services Division, Mass Media Bureau, requested that Mr. Flanders submit information concerning his compliance with Section 73.1740 (Minimum Operating Schedule) and Section 73.1750 (Discontinuance of Operation) of the Commission's Rules. Mr. Flanders responded, by letter dated September 30, 1992, stating that the bankruptcy estate for which he is trustee entered into an arrangement to assign the WJHH(AM) license to Mr. Terry Meeks on June 26, 1991, and that since that date the bankruptcy estate has had no involvement with the station. However, no application has ever been filed for Commission consent to assign the WJHH(AM) license and it appears, from the record before us, that Mr. Flanders does not intend to do so. Therefore, it does not appear that the broadcast operations of WJHH(AM) will be resumed. Further, in view of the fact that WJHH(AM) has been off the air without authority for an extended period of time and the licensee has not surrendered its license, Mr. Flanders is in apparent violation of Sections 73.1740(a)(4)³ and 73.1750⁴ of the Commission's Rules.

3. Accordingly, IT IS ORDERED, That pursuant to Section 312(a)(3) and (4) of the Communications Act of 1934, as amended, H. Gibbs Flanders, Jr., Trustee, is DIRECTED TO SHOW CAUSE why the license for Station WJHH(AM) should not be REVOKED, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

¹ The Mass Media Bureau has been delegated authority to issue and release Show Cause Orders in cases involving silent broadcast stations. See *Debrine Communications, Inc.*, 7 FCC Rcd 2118 (1992).

² Mr. Flanders has failed to certify that he is not subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988, 21 U.S.C. Sec. 862(a). This certification is required of every individual making an application to the Commission. See *In the Matter of Amendment of Part 1 of the Commission's Rules to Implement Section 5301 of the Anti-Drug Abuse Act of 1988*, 6 FCC Rcd 7551 (1991).

³ Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall

continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.)

⁴ Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

(a) To determine whether H. Gibbs Flanders, Jr., Trustee, has the capability and intent to expeditiously resume broadcast operations of WJHH(AM) consistent with the Commission's Rules.

(b) To determine whether H. Gibbs Flanders, Jr., Trustee, has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether H. Gibbs Flanders, Jr., Trustee, is qualified to be and remain the licensee of Station WJHH(AM).

procedure, such inclusion here should not be viewed in any manner as suggesting or otherwise indicating what the initial or final disposition of this proceeding should be.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Mass Media Bureau

4. IT IS FURTHER ORDERED, That the Mass Media Bureau SHALL SERVE upon the licensee, within thirty (30) days of the release of this Order, a BILL OF PARTICULARS, with respect to the issues specified above.

5. IT IS FURTHER ORDERED, That, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the MASS MEDIA BUREAU.

6. IT IS FURTHER ORDERED, That to avail himself of the opportunity to be heard, the licensee, pursuant to Section 1.91(c) of the Commission's Rules, SHALL FILE with the Commission within thirty (30) days of the receipt of this Order a WRITTEN APPEARANCE stating that he will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file a written appearance within the time specified, or within thirty (30) days of receipt of this Order the licensee files a written statement expressly waiving his right to a hearing, the licensee's right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event the right to a hearing is waived, the Presiding Judge, or the Chief Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding and CERTIFY this case to the Commission in the regular course of business, and an appropriate Order shall be entered.⁵

7. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order revoking the license for WJHH(AM), Soperton, Georgia, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the licensee in an amount not exceeding \$250,000.00 for the willful and/or repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this document constitutes a NOTICE OF APPARENT LIABILITY for willful and repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, it shall, as a matter of course, include a forfeiture notice so as to maintain the fullest possible flexibility of action. Since the practice of including such forfeiture notice is a routine

⁵ The Mass Media Bureau has been delegated authority to issue Revocation Orders in cases involving silent broadcast stations. See *Radio Northwest Broadcasting Company*, 4 FCC Rcd 596, n.3 (1989).